IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No. 22 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE ANIL R. DAVE
HONOURABLE MR.JUSTICE Z.K.SAIYED

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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C.I.T. - Applicant(s)
Versus
BIRADARI INVESTMENT PVT. LTD. - Respondent(s)

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Appearance :
MR MANISH R BHATT for Applicant(s) : 1,
MR RK PATEL for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE

and

HONOURABLE MR.JUSTICE Z.K.SAIYED

Date : 12/12/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE ANIL R. DAVE)

1. At the instance of the revenue, the following questions of law have been referred to this Court for its opinion by the Income Tax Appellate Tribunal, Ahmedabad Bench “A”, under the provisions of Section 256(2) of the Income-tax Act, 1961 (hereinafter referred to as “the Act”):

1. “Whether in the facts and circumstances of the case, the Appellate Tribunal is right in law that the interest on debentures issued by companies other than local authority, company or corporation established by a central, State or Provincial Act is not liable to be computed as income under the head “interest” on securities?

2. Whether interest on debentures in all circumstances is liable to be considered Income only when received by the assessee and not when it has been due?”

2. We have heard learned Standing Counsel Shri Manish Bhatt appearing for the revenue and learned advocate Shri B.G. Karia appearing for learned advocate Shri R.K. Patel for the respondent.

3. Upon hearing the learned advocates and looking to the facts of the case, we need not discuss the facts for the reason that the questions, which have been referred to hereinabove, are no more *res integra.*

4. Our attention has been drawn to the judgement delivered in the case of **COMMISSIONER OF INCOME-TAX Vs UPNISHAD INVESTMENT PVT. LTD. AND ORS reported in [2003] 260 ITR 532**.

5. Similar questions had been raised in the case referred to hereinabove. We are in respectful agreement with the ratio of the judgement delivered in the case of **COMMISSIONER OF INCOME-TAX Vs UPNISHAD INVESTMENT PVT. LTD. AND ORS (Supra)**.

6. In view of the law laid down in the judgement referred to hereinabove, we answer the first question in the negative i.e. in favour of the revenue and against the assessee, whereas the second question is answered in the affirmative i.e. in favour of the assessee and against the revenue.

7. The reference, thus, stands disposed of with no order as to costs.

(ANIL R. DAVE, J.) (Z.K. SAIYED,J.)

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